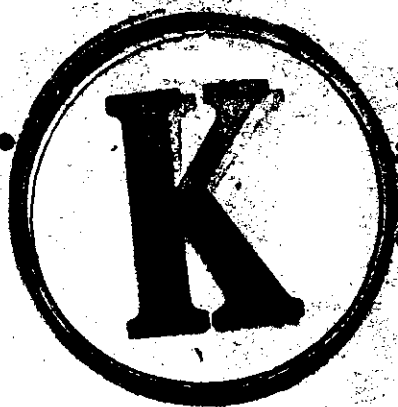


1952.



File No. 0 Letters Patent  
52

Legal Dept-

A. BRANCH

ad.  
29/6

p. 7 (E)

Subject:— Opinions under the Letters  
Patent of the High Court

File No. 0 Letters Patent | 52

Gen. 194 a

739-A

C O N T E N T S.

Legal Department File No. O. Letters Patent /52.

| Sr.<br>No. | R.I. No. / O. No. | Subject | pages. |
|------------|-------------------|---------|--------|
|------------|-------------------|---------|--------|

Opinions under the Letters  
Patent of the High Court.

1

2351  
13-2-52.

The Appointment of the  
Dy. Sheriff.- no objection  
to transfer or promote  
the incumbent were without  
amending the Letters Patent.

1 - 7

Office of the R.L.A.

A self-contained note describing the history and explaining the legal position regarding the appointment of the Deputy Sheriff is enclosed herewith.

2. Since the Deputy Sheriff's post is a permanent pensionable post, there should be no objection to transfer or promote the incumbent, of course with the consent of the Sheriff who can then proceed to make a fresh appointment. That course seems feasible even without amending the Letters patent.

O.C.      Sd/- (P.L.L.)

Remembrancer of Legal Affairs.

C.G.R. 10-6-

C 5

Note on Deputy Sheriff.

The questions for consideration are :

- (1) What is the legal position regarding the appointment of Deputy Sheriff,
- (2) What is the practice followed at present in making the appointment, and
- (3) Whether the present practice and legal position can be changed by Government so as to bring them in accord with the intentions of Government.

2. These questions were fully examined by the R.L.A. in his opinion No. 2213 dated 6th April 1935. Since then, there is practically no change in the legal position and the practice followed in making the appointment.

3. For the proper understanding of the subject, the earlier history (as stated in R.L.A.'s opinion dated 6-4-1935) and legal position may be summarised as follows.

Paragraph 20 of the Letters patent of 8th December 1823 empowered the Governor in Council to appoint a Sheriff and the term of office of the person so appointed was to last for one year. By paragraph 21, the Sheriff was empowered to appoint his Deputy and he was also made responsible for the acts of his Deputy. Under paragraph 27, the Sheriff was entitled to demand and receive such fees as may be determined by the High Court. Thus the position of the Deputy Sheriff under the Letters Patent was that he was to be appointed by the Sheriff for one year and the Sheriff was to remunerate him for his services. Each succeeding Sheriff might, if he chose, appoint his own Deputy. The provisions of the Letters Patent of 1823 relating to the Deputy Sheriff are in ~~some~~ force to this day and govern the person appointed to this post.

4. The statutory position of the Deputy Sheriff has in practice been considerably modified by Government orders passed from time to time. In 1868 the post of the Deputy Sheriff ..... was made permanent by Government. It was

It was made pensionable in 1879. In 1897, Government directed by their G.R. No. 4164 dated 1st June 1897 that the fees levied by the Sheriff should be credited to Government. The G.R. also directed that the Sheriff's establishment should continue to be Government pensionable establishment. The effect of the G.R. was that Government began to receive fees which under the Letters Patent the Sheriff was entitled to receive, while his legal responsibility for the acts of his subordinates remained unchanged. With a view to removing this anomaly, Government issued G.R., H.D. No. 1746/2 dated 14th October 1930 whereby they directed that the Sheriff should be indemnified by them against all liabilities which he may incur in the lawful execution of his office.

5. Even though the powers of the Sheriff in respect of the appointment of a Deputy Sheriff have been modified by the executive orders passed by Government from time to time, it is held by the Bombay High Court in the Sheriff of Bombay vs. Hakimji Motajee & Co. I.L.R., 51 Bom. 749, as follows :-

"The Letters Patent may be varied by legislation or by further Letters Patent issued by His Majesty, but in general it is not open for the Letters Patent to be varied by mere resolutions either of the Government of Bombay or of the Government of India."

6. From 1st April 1937, the Government of India Act, 1935, came into force. By virtue of the provisions of section 241 of that Act the power to appoint Deputy Sheriff, one of the officers serving in connection with the affairs of the Province, reverted to the Governor. But on the same day G.N. F.D. No. 1527/33-B dated 1-4-37 was issued. The object of that notification was to maintain the status quo and any officer subordinate to Government who was authorised by any law to make any appointment to any civil post in connection with the affairs of the Province was permitted to ....

to continue to exercise the same power of making the appointment. The power to appoint Deputy Sheriff has thus remained with the Sheriff to this day.

7. During the last 40 years it appears that there were only two occasions to appoint the Deputy Sheriff. In 1914, Mr. F.M. Chinoy, who was the Sheriff of Bombay at that time, appointed Khan Bahadur A.P. Mehta as the Deputy Sheriff. Khan Bahadur Mehta served as Deputy Sheriff for about 20 years and retired from 1st November 1934. In 1934, when Khan Bahadur Mehta was about to retire, it appears from the correspondence in H.D. file No. 5292/3-L-B of 1934-36 that Sir Suleman Cassim Mitha, who was the Sheriff at that time insisted upon his right to appoint his Deputy and appointed one Mr. Kaderbhoy, Bar-at-law, as the Deputy Sheriff, without consulting Government or the High Court. On inquiry, Government found that Mr. Kaderbhoy was not a suitable person and the Sheriff was, therefore, asked to reconsider his decision. In the meanwhile, Mr. Kaderbhoy had not taken charge, tendered a formal resignation. The Sheriff then appointed the present Deputy Sheriff Mr. Mahomed K. Nemazif, B.A., LL.B. Mr. Nemazif is holding the post of Deputy Sheriff from 1st November 1934.

8. The practice followed so far, therefore, was that the appointment of Deputy Sheriff was made by the Sheriff.

9. Since the time of appointment of Mr. Kaderbhoy it was realised that the provision for making the appointment of Deputy Sheriff was not satisfactory and requires revision. In his D.O. letter dated 6th September 1934 (p. 37 of H.D. file 5292/3-L ), the Chief Justice recorded that as the duties of Deputy Sheriff consist mainly of business connected with the High Court, the Chief Justice ought to have a say in

say in the matter. As the Sheriff has been indemnified by Government from all liability and the expenses of the Sheriff's establishment are borne by Government, it was thought appropriate that the power to appoint Deputy Sheriff should vest in Government to be exercised by them in consultation with the Chief Justice and the Sheriff. For the purpose in view, it is necessary to undertake legislation. The requisite draft amendments to the Letters Patent of 1865 were therefore prepared by the R.L.A. and sent to the H.D. with his opinion No. 4108 dated 15th July 1935 (p. 117 of H.D. file 5292/3-I). The draft Bill was also shown to and approved by the High Court. The draft amendments provide (1) that the appointment of Deputy Sheriff shall be made by Government in consultation with the Chief Justice and the Sheriff, (2) that the fees levied by the Sheriff shall be credited to Government to meet the cost of the establishment of the Sheriff's office, and (3) that the Sheriff shall be indemnified by the Government against all liabilities which may be incurred by the Sheriff in the lawful execution of his office. These draft amendments, <sup>were revised along with other amendments</sup> proposed in the Letters Patent of 1865 and a draft Bill was sent to H.D. with R.L.A.'s opinion No. 2136 dated 27th February 1940 (p. 47, H.D. file 4299-2-III). In view of the constitutional changes, the draft Bill was referred to the R.L.A. in 1951 to examine the suitability and necessity of the proposed legislation. In his opinion No. 5613 dated 7th April 1951, which is referred to at 'A' in the last paragraph of P. & S.D. note dated 31-4-1952 at p. 3 ante, the R.L.A. has pointed out that if it is decided to promote the proposed legislation, in view of the constitutional changes, the draft Bill will have to be split up as some parts of the Bill now fall under entry 78 in the Union List and the remaining part of the Bill which fall under the State List will have to be revised. That

That part of the draft Bill (i.e. clause 7 at pp. 61 to 71 of H.D. file 4299/2-III ) which relates to the Sheriff, Deputy Sheriff etc. falls under the State List and therefore the State Legislature is competent to undertake the legislation to change the present legal position and bring it in accord with the intentions of Government.

10. It will be seen from Secretary, H.D.'s note dated 4-5-51 at p. 127 of H.D. file 4299/2-III that the question whether the amendments regarding the Sheriff should be undertaken was recently considered by Government and it was decided that the question of amending the Letters Patent for the above purpose may be dropped for the present as none of the amendments is either urgent or essential.

SW  
28/6

28/28/6